Editor's note: Reconsideration denied by order dated Jan. 23, 1984

MICHAEL HUDDLESTON ET AL.

IBLA 80-852 Decided September 21, 1983

Appeal from decision of the California State Director, Bureau of Land Management, declining to designate three wilderness inventory units as wilderness study areas. CA-050-131, CA-050-134, and CA-050-135.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Wilderness

   Sec. 603 of the Federal Land Policy and Management Act of 1976 directs the Secretary of the Interior to review those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory as having wilderness characteristics, and report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness.

2. Federal Land Policy and Management Act of 1976: Inventory and Identification -- Federal Land Policy and Management Act of 1976: Wilderness -- Wilderness Act

   While the BLM may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands.

3. Federal Land Policy and Management Act of 1976: Wilderness -- Wilderness Act

   In determining whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation, it is not improper for BLM to compare the opportunities of the unit under consideration with those of other units for the purpose of determining whether the opportunities are "outstanding"; the term "outstanding" is necessarily comparative in concept.

4. Federal Land Policy and Management Act of 1976: Inventory and Identification -- Federal Land Policy and Management Act of 1976: Wilderness

   In assessing the wilderness characteristics of a unit during intensive inventory, BLM must consider whether the unit itself possesses those characteristics regardless of the character of adjacent areas that are not public lands.

5. Federal Land Policy and Management Act of 1976: Wilderness -- Wilderness Act
   Where the record evidences BLM's first-hand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding opportunities for solitude, or primitive and unconfined type of recreation are entitled to considerable deference.

APPEARANCES: Michael Huddleston, for the Cahto Coalition; Dennis Coules, for California Wilderness Coalition as an amicus curiae; Iva Warner and Ron Guenther, for Sierra Club, Redwood Chapter, Intervenor; Dale D. Goble, Esq., Office of the Solicitor, United States Department of the Interior, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

In December 1979 the California State Office, Bureau of Land Management (BLM), issued the Final Intensive Inventory Public Lands Administered by BLM California Outside the California Desert Conservation Area (Inventory) filed

pursuant to a notice published in the Federal Register. 45 FR 1457 (Jan. 7, 1980). By decision dated June 25, 1980, the State Director dismissed a protest which had requested that three areas (CA-050-135, Cahto Peak; CA-050-134, Elkhorn Ridge; and CA-050-135, Brush Mountain) be designated as wilderness study areas (WSA's) in addition to the other areas listed in the Inventory. On behalf of the members of the Cahto Coalition, Michael Huddleston appeals from the denial of the protests. The Sierra Club-Redwood Chapter has subsequently moved to intervene as an intervenor-appellant, which motion was granted on October 1, 1980. The California Wilderness Coalition has also submitted an amicus brief. For sake of brevity, these groups will be referred to as "appellants."

[1] BLM's wilderness review is carried out pursuant to section 603 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782 (1976), and the Wilderness Act, 16 U.S.C. § 1131 (1976). Section 603 of FLPMA directs the Secretary of the Interior to review all public land roadless areas of 5,000 acres or more having wilderness characteristics in order to determine their suitability or nonsuitability for wilderness designation, and report these suitability recommendations to the President. This process has three phases: the inventory phase, the study phase, and the reporting phase.

The decision at issue relates to the inventory phase. The purpose of this phase is to identify those units which possess three basic statutory criteria ((1) Roadless, (2) 5,000 acres or more or are islands, and (3) wilderness characteristics), and to eliminate those which do not from wilderness review under section 603. In establishing procedures for the inventory phase, BLM bifurcated it into an initial and an intensive inventory. The purpose of the initial inventory decision in the BLM process is to eliminate from further examination those units which clearly and obviously do not meet the three criteria noted above based on readily available existing information. Those units which possibly meet the criteria are subject to an intensive inventory involving a thorough ground examination including the gathering of information in the field and full documentation of the character of the unit. Public input and involvement is important and encouraged at each phase.

Section 2(c) of the Wilderness Act defines wilderness as follows:

> A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this chapter an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as

> to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

16 U.S.C. § 1131(c) (1976).

The decision appealed herein affirms the determinations reached in BLM's final intensive inventory. It states that all wilderness values were evaluated for each unit according to the statutory criteria.

[2] With respect to the wilderness characteristics for Brush Mountain and Elkhorn Ridge, the BLM decision states:

> Brush Mountain (CA-050-135)
>
> The published narrative and Permanent Documentation File agree with the statement that Brush Mountain "is primarily affected by the forces of nature, the imprint of man is unnoticeable." Brush Mountain has only limited opportunities for solitude or for primitive and unconfined recreation. The unit's small size and boundary configuration confines and concentrates visitors, making it difficult to find a secluded spot away from the sights, sounds, and evidence of other people in the inventory unit.
>
> Elkhorn Ridge (CA-050-134)
>
> Elkhorn Ridge offers only limited opportunities for solitude or for primitive and unconfined recreation. The small size and boundary configuration of the unit concentrate and confine the visitor. The primitive recreation or solitude opportunities cannot be considered outstanding relative to other areas evaluated for WSA status in this area.

Initially, we note that the Elkhorn Ridge and Brush Mountain inventory units each comprise less than 5,000 contiguous roadless acres. 1/ Appellants point out that the Wilderness Inventory Handbook (WIH) at page 12 contemplates designation of WSA's of less than 5,000 acres where either

> 1) They are contiguous with lands managed by another agency which have been formally determined to have wilderness or potential wilderness values, or
>
> 2) The public has indicated strong support for study of a particular area of less than 5,000 acres and it is demonstrated that it is clearly and obviously of sufficient size as to make practicable its preservation and use in an unimpaired condition, and of a size suitable for wilderness management, or

1/ Elkhorn Ridge contains 2,360 acres and Brush Mountain contains 2,800 acres.

> 3) They are contiguous with an area of less than 5,000 acres of other Federal lands administered by an agency with authority to study and preserve wilderness lands, and the combined total is 5,000 acres or more.

Appellants argue that because a tract of wilderness land owned by a private organization, the Nature Conservancy, adjoins the units, the size exception for lands adjacent to lands managed by another agency should apply. They note the considerable public support for designation of these areas and state that potential for preservation in an unimpaired condition has been demonstrated.

Consideration of these units for further wilderness review by virtue of their contiguity with the Nature Conservancy is not authorized by section 603(a) of FLPMA. See Square Butte Grazing Association, 67 IBLA 25 (1982).

The question of whether BLM has the authority to designate an area of less than 5,000 acres as a WSA, pursuant to section 603 of FLPMA was discussed at some length in Tri-County Cattlemen's Association, 60 IBLA 305 (1981). We concluded, initially, that while BLM was required by section 201(a) of FLPMA, 43 U.S.C. § 1711(a) (1976), to identify, during the inventory process, areas of the public lands which exhibit wilderness characteristics, we stated that

> once the inventory stage is completed, the authority for designation of areas of the public lands as WSA's is derived from section 603(a) of FLPMA. That section directs the Secretary to review only those areas of 5,000 acres or more. Thus, it appears that section 603(a) of FLPMA established a minimum acreage requirement for WSA's. [Emphasis in original.]

Tri-County Cattlemen's Association, supra at 312.

In accordance with Tri-County Cattlemen's Association, supra, we hold, therefore, that the Elkhorn Ridge and Brush Mountain inventory units may not be designated as WSA's pursuant to section 603(a) because neither unit comprises 5,000 acres. This holding must be made despite the strong public support for designation of the units as WSA's. ASARCO, Inc., 64 IBLA 50, 61 (1982). BLM may desire to manage these lands under the general management authority of section 302 of FLPMA, 43 U.S.C. § 1732 (1976), but that question is not properly before us in this appeal. See Tri-County Cattlemen's Association, supra.

Cahto Peak (CA-050-131)

The Cahto Peak unit, containing 5,871 acres, meets the minimum acreage requirement of section 603(a) of FLPMA. BLM determined that this unit also meets the naturalness criterion, but that it lacks outstanding opportunities for solitude or a primitive and unconfined type of recreation.

In response to appellants' protest the BLM decision states in part:

> Both the published narrative and Permanent Documentation File on Cahto Peak (CA-050-131) conclude that the area "generally

> appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable." Most of the imprints of man, such as timber harvests, salvage sales after fires, and ways, can be expected to return to a substantially unnoticeable level either by natural processes or by hand labor. Some imprints of man in the southern portion of the unit would require artificial rehabilitation by the use of power machinery to return them to a natural condition and would not be considered as meeting wilderness characteristic criteria. Exclusion of these areas does not reduce the area to below 5,000 acres.
>
> * * * * * * *
>
> Major drainages and stands of old growth Douglas fir provide only limited opportunities for solitude and primitive and unconfined recreation in this unit. These opportunities are severely limited and are not considered outstanding relative to other areas considered for WSA status in this area.
>
> * * * * * * *
>
> The fire lookout, communication site, and related roads are considered outside the boundary of the inventory unit.
>
> Cahto Peak meets the size and naturalness criteria of Section 2c of the Wilderness Act of 1964, but lacks outstanding opportunities for solitude or for primitive and unconfined recreation.

In their statement of reasons, appellants claim that BLM incorrectly compared the Cahto Peak unit with other units, that BLM's description of the land does not reflect the true extent of the unit's wilderness potential and that the decision was based on insufficient data in concluding that the unit does not contain outstanding opportunities for solitude or a primitive and unconfined type of recreation. They also contend that the BLM's inventory of the Cahto Peak unit failed to provide a sufficient factual basis to allow members of the public to evaluate their conclusions, and request a public hearing to permit the public to become involved in the evaluation of the unit's wilderness values. 2/

[3] First, we reject appellants' argument that reassessment of the unit is required because BLM compared the Cahto Peak unit with other units in reaching its conclusion that outstanding opportunities for solitude are absent from the unit. The BLM reference to the Cahto Peak unit's opportunities for solitude not being outstanding, in relation to other areas evaluated for WSA status, is contained in the State Director's response to certain protests. Appellants cite Organic Act Directive (OAD) 78-61, Change 3, in support of their contention that there must be no comparison among inventory

2/ Because of the voluminous input supplied by the appellants, as well as many other members of the public, this Board cannot conclude that additional hearings would be useful.

units. This argument has been addressed by this Board in a number of cases, among them, ASARCO, Inc., supra. Therein, we noted that, in order to attribute outstanding opportunities, values, or characteristics to land, the land must be compared with other lands, as the term "outstanding" is necessarily comparative in concept. Id. at 59. The WIH at page 13 defines the term "outstanding" as "Standing out among others of its kind; conspicuous; prominent; (2) superior to others of its kind; distinguished; excellent." BLM's comparison of the opportunities for solitude or a primitive and unconfined type of recreation in the Cahto Peak unit with the opportunities of other areas in the region was not improper. In Committee for Idaho's High Desert, 62 IBLA 319, 326 (1982), the concurring opinion stated: "In order to attribute 'outstanding' opportunities, values, or characteristics to land, that land must be compared with other lands, as the term 'outstanding' is necessarily comparative in its concept." (Emphasis in original.)

[4] We find no merit to appellants' contentions that BLM improperly inventoried and evaluated the unit because it did not consider it in conjunction with adjacent private lands. For the purposes of the wilderness inventory, BLM is required to assess whether a unit, by itself, has the requisite wilderness characteristics. Don Coops, 61 IBLA 300, 306 (1982). Our holding in Coops is based on the FLPMA mandate, found in sections 603(a) and 201(a), that the Secretary inventory and review "public lands" for wilderness characteristics. As used in FLPMA, the term "public lands" excludes lands not managed by BLM.

[5] Appellants have voiced their concerns associated with the preservation of the natural environment and demonstrated their familiarity with the flora and fauna of the area. They have submitted numerous petitions and documents to support their position that the unit does possess outstanding opportunities for solitude or a primitive and unconfined type of recreation. However, they have presented no evidence to establish that BLM's assessment was inadequate or that its conclusions were wrong. The record is replete with statements and petitions from interested members of the public who state that in their opinion the unit should be designated as a WSA. The record shows that BLM has conscientiously evaluated and attempted to answer the public's concerns during the inventory phase. Appellants' comments, in essence, amount to a disagreement with BLM's determination that the unit does not possess outstanding opportunities. As set forth in ASARCO, Inc., supra, this determination calls for a highly subjective judgment by BLM. During the inventory BLM has received numerous comments concerning this unit from many individuals and groups. The record also evidences BLM's firsthand knowledge of the area. BLM's expertise and familiarity entitle it to considerable deference in such subjective determinations. Appellants' views to the contrary, while reasonable, do not undermine this deference.

By giving such deference to BLM, we do not mean to imply that its determinations are immune from review. To the contrary, BLM's documentation for its judgment has been carefully studied, as well as the documentation submitted by appellants. An appellant has a particularly heavy burden to support a reversal of BLM's subjective conclusions. We cannot say that appellants have met this burden on the issue of the unit's outstanding opportunities for solitude or a primitive and unconfined type of recreation. Conoco,

Inc., 61 IBLA 23, 28 (1981). The decision not to designate an area as a WSA will be affirmed in the absence of compelling reasons for modification or reversal. The burden of showing error is on one challenging the decision. Richard J. Leaumont, 54 IBLA 242, 88 I.D. 490 (1981); Sierra Club, 54 IBLA 31 (1981). In the present case, appellants have failed to offer compelling reasons for disturbing the State Director's assessment of the wilderness characteristics of the unit. They have not shown that he failed to consider adequately all of the factors involved. Tri-County Cattlemen's Association, supra.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Director is affirmed, and the request for a public hearing is denied.

_____
Gail M. Frazier
Administrative Judge

We concur:

_____
James L. Burski
Administrative Judge

_____
Edward W. Stuebing
Administrative Judge